

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

|                           |   |   |
|---------------------------|---|---|
| UNITED STATES OF AMERICA, | : | CASE NO. 1:19CR187                      |
|                           | : |   |
| Plaintiff,                | : |   |
|                           | : | JUDGE JOHN R. ADAMS                     |
| vs.                       | : |   |
|                           | : |   |
| JOSHUA NOVAK,             | : | <b><u>JOSHUA NOVAK'S SENTENCING</u></b> |
|                           | : | <b><u>MEMORANDUM</u></b>                |
| Defendant.                | : |   |

Joshua Novak submits this sentencing memorandum in support of his request for a downward variance with recommended drug treatment and counseling.

Mr. Novak is 28 years old. He has a GED and has worked as a forklift driver and with temp agencies. PSR ¶¶ 79-80.

Earlier this year, in two controlled buys, Mr. Novak sold less than one gram of crack cocaine, fentanyl, and heroin. Police obtained a search warrant for his residence and car and found 6.86 grams of a mixture of fentanyl and heroin, .9 grams of crack cocaine, and a firearm. A grand jury indicted him on three counts of distributing drugs, two counts of possessing drugs with intent to distribute, and one count of possessing a firearm after a felony conviction. He pleaded guilty to the indictment and accepts responsibility for his conduct. PSR ¶¶ 1, 14-18, 21.

Mr. Novak technically qualifies as a career offender, based on convictions for drug-trafficking and assault that he committed within five months of each other in 2010 and 2011, when he was 19 years old. He was sentenced to two years in custody on one and one year consecutive on the other. Since then, he has had only misdemeanor convictions. As a career offender, his advisory guidelines range is 188 to 235 months in prison. Without the career-offender

enhancement, his total offense level after acceptance of responsibility would be 21, and his criminal history category would be IV, yielding an advisory guidelines range of 57 to 71 months in prison. PSR ¶¶ 31-40, 53-54, 61-62. And that range is based on his firearms offense—his non-career-offender guidelines range based on his drug offenses would be lower.

Mr. Novak recognizes that his offenses are serious crimes, and is not requesting a sentence within his non-career-offender guidelines range. But the career-offender range overstates the seriousness of his offense and his criminal history. Under the career-offender guidelines, two offenses that Mr. Novak committed when he was 19 years old would require nearly 12 additional years in prison. Those offenses came after a childhood spent in poverty, in a neighborhood surrounded by drugs and violence and without his father. PSR ¶¶ 71-72. As the Supreme Court has noted, teenagers are “comparative[ly] immature[e],” are “more vulnerable or susceptible to negative influences and outside pressures,” and have a character “not as well formed as that of an adult.” *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005). For these reasons, “their irresponsible conduct is not as morally reprehensible as that of an adult,” and “a greater possibility exists that a minor’s character deficiencies will be reformed.” *Id.* at 570 (internal quotation marks omitted). Thus, a lengthy sentence within the career-offender guidelines range does not take into account the circumstances of Mr. Novak’s criminal history.

Mr. Novak accepts responsibility for his actions and recognizes the need to dedicate himself to substance abuse treatment and counseling to become a productive member of society in the future. *See* PSR ¶¶ 76, 78. He requests that the Court vary downward from the career-offender range and recommend treatment and counseling to best account for Mr. Novak’s history and characteristics and the nature and circumstances of the offense, promote respect for the law, protect the public, and provide needed training and correctional treatment.

Respectfully submitted,

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